

STATE OF MICHIGAN  
COURT OF APPEALS

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In the Matter of JUSTIN TYLER ARIZOLA and  
MARIA THERESA RENEE' ARIZOLA, Minors.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

AL PACINO ARIZOLA,

Respondent-Appellant,

and

STEPHANIE LYNN DYKMAN,

Respondent.

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UNPUBLISHED

May 8, 2008

No. 281861

Muskegon Circuit Court

Family Division

LC No. 05-034211-NA

Before: White, P.J., and Hoekstra and Smolenski, JJ.

PER CURIAM.

Respondent Arizola appeals as of right from a circuit court order terminating his parental rights to the minor children pursuant to MCL 712A.19b(3)(i). We affirm.

Respondent's sole claim on appeal is that his right to due process was violated because he did not receive notice of, or was not allowed to participate in, various hearings that took place. Respondent did not raise this issue below and, therefore, it has not been preserved for appeal. *Rooyakker & Sitz, PLLC v Plante & Moran, PLLC*, 276 Mich App 146, 162; 742 NW2d 409 (2007). Accordingly, the issue is reviewed for plain error. *Kloian v Schwartz*, 272 Mich App 232, 242; 725 NW2d 671 (2006).

"Due process in civil cases generally requires notice of the nature of the proceedings, and an opportunity to be heard in a meaningful time and manner, and an impartial decisionmaker." *In re Juvenile Commitment Costs*, 240 Mich App 420, 440; 613 NW2d 348 (2000). In addition, a respondent in a child protective proceeding has a statutory right to notice. *In re AMB*, 248 Mich App 144, 173; 640 NW2d 262 (2001). The respondent must be served with process with respect to both the initial petition and a supplemental termination petition. MCR 3.920(B) and (F); MCR 3.977(C)(1). A respondent is entitled to notice of all other hearings. MCR

3.921(B)(1). Notice is to be given in writing or on the record at least seven days before the hearing. MCR 3.920(C)(1).

Respondent and his attorney were served with the petition at the preliminary hearing. Both were also present at the adjudication hearing. Respondent contends that he was not given notice of the initial dispositional hearing. The record shows that the hearing date was set in the order of adjudication. In addition, the file contains a notice of the hearing to all interested persons, including respondent and his attorney, dated September 1, 2006. Nevertheless, neither respondent nor his attorney appears to have been present at the September 12, 2006 hearing. Respondent participated in the December 21, 2006 hearing regarding a third child by telephone, and his attorney was present. At the end of that hearing, the court continued the out-of home placement of the two children involved here. Respondent did not object. We conclude defendant has not shown that his rights were violated with respect to the September hearing.

Respondent next takes issue with the March 2007 review hearing. The hearing date was set forth in the order entered after the December 2006 review hearing. In addition, the file contains a notice of the hearing to all interested persons, including respondent and his attorney, dated January 18, 2007. Although the court failed to secure respondent's physical presence, the record discloses that respondent did in fact participate by telephone. Pursuant to MCR 2.004 and MCR 3.923(E), an incarcerated party may appear by telephone. A parent does not have an absolute right to be physically present at a hearing. *In re Vasquez*, 199 Mich App 44, 49-50; 501 NW2d 231 (1993).

Respondent also takes issue with the June 22, 2007, post-termination review hearing. However, while the title page of the transcript states that it pertains to the instant case, the transcript reveals that the hearing concerned the children's sibling.

Lastly, we observe that notwithstanding challenges to the adequacy of the notice of the various hearings, the record shows that respondent was present in court with his attorney on August 29, 2007, and that he entered into a settlement agreement with respect to the children at that time. He waived his rights and stated his agreement on the record, and raised no objections at that time.

Affirmed.

/s/ Helene N. White  
/s/ Joel P. Hoekstra  
/s/ Michael R. Smolenski